

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VALBONA PEPAJ,

Plaintiff,

-against-

INNOVATIVE FACILITY SERVICE, et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 1/19/2024

23-CV-7159 (JPC) (BCM)

ORDER**BARBARA MOSES, United States Magistrate Judge.**

By Order dated November 17, 2023 (Dkt. 10), the Court extended plaintiff Valbona Pepaj's deadline to serve defendants with process, giving her until January 12, 2024, to do so. On January 12, 2024, plaintiff filed: (i) an Affirmation of Service, signed by her, stating that she mailed the summons, the complaint, and waiver of service form to defendant Innovative Facility Services (IFS) by certified mail (Dkt. 14);¹ (ii) a typed letter explaining her service efforts, reporting that defendant Alex Cabral still works for IFS, advising the Court that IFS "accepted the papers from the server for Mr. Cabral to sign and to be returned," but expressing concern that Mr. Cabral could choose "not to sign in a timely manner" (Dkt. 15); and (iii) a hand-written letter in which plaintiff recounts a phone conversation with a representative at NYLAG who, according to plaintiff, offered only to assist her with retaining paid counsel. (Dkt. 16.)

¹ The Court notes that a defendant who is sent a valid request to waive service has 30 days from the date the request was sent to return the waiver form, Fed. R. Civ. P. 4(d)(1)(F), and has 60 days from the date the waiver request was sent to answer or otherwise respond to the complaint. Fed. R. Civ. P. 4(d)(3). If the request complies with Rule 4(d) and the defendant nonetheless fails without good cause to sign and return the waiver form, such that plaintiff is required to incur additional expenses to effect service of process on that defendant, the court "must impose" those expenses on the non-waiving defendant. Fed. R. Civ. P. 4(d)(2).

Whether Plaintiff Has Adequately Effectuated Service

Among the attachments to plaintiff's filings are a series of emails between Miguel J. Sampaio of MJS Investigations and Jackie Urias of KBS Services. In one email (the date of which is not displayed), Ms. Urias states:

Alex Cabral is an employee of IFS and if there is a case filed in Federal Court in NY naming Alex Cabral and IFS (which is a subsidiary of KBS), subpoena and/or summons should have been mailed to IFS address which is 1573 Henthorne [Drive, Maumee, OH 43537] or you can send to corporate KBS office in CA, 3605 Ocean Ranch Blvd., Suite 200, Oceanside, CA 92056.

(Dkt. 15 at ECF p. 3.) In another email, dated January 9, 2024, Mr. Sampaio asks Ms. Urias, "Does KBS accept service via email? Or has to be mailed or served in person?" (*Id.* at ECF p. 4.) Also on January 9, 2024, Ms. Urias replies, "Yes, please email to kbslegaldepartment@kbs-services.com." (*Id.*) There is no further correspondence attached showing email service of the summons and complaint. However, plaintiff separately attaches an "Affidavit of Digital Service" signed by Mr. Sampaio, dated January 11, 2024, explaining that after he spoke with "Jackie Urias – Insurance Claims and Legal Assistant, Legal Department for KBS Services," the "parent company for Innovative Facilities Solutions," he emailed "the documents" to kbslegaldepartment@kbs-services.com, "as well as a courtesy copy directly to the Legal Department." (*Id.* at ECF p. 5.)

It is not clear from Mr. Sampaio's affidavit which "documents" he sent to KBS Services. Consequently, the Court cannot determine whether plaintiff has adequately effected service of process on defendant IFS or defendant Cabral. Should defendants fail to respond to the Complaint, and should plaintiff seek the entry of a default against them, plaintiff must file a supplemental affidavit from Mr. Sampaio (i) listing all of the documents that Mr. Sampaio emailed to KBS Services, and (ii) attaching a copy of the email that Mr. Sampaio sent, including its attachments.

Proceeding In Forma Pauperis

The Court notes that even though plaintiff paid the filing fee to initiate this action, she may be entitled to proceed *in forma pauperis* (IFP), which would entitle her to rely on the United States Marshals Service, if necessary, to serve the summons and complaint upon defendants. *See* 28 U.S.C. § 1915(a)(1), (d).

The ability to proceed IFP is a "privilege provided for the benefit of indigent persons." *Cuoco v. U.S. Bureau of Prisons*, 328 F. Supp. 2d 463, 467 (S.D.N.Y. 2004) (quoting *Chung v. Dushane*, 2003 WL 22902561, at *2 (N.D. Ill. Dec. 9, 2003)). There is no pre-set income or asset level that qualifies a plaintiff for IFP status, and the plaintiff need not "demonstrate absolute destitution." *Potnick v. E. State Hosp.*, 701 F.2d 243, 244 (2d Cir. 1983). However, "he or she must demonstrate poverty to qualify." *Shabtai v. Levande*, 2013 WL 6116850, at *1 (E.D.N.Y. Nov. 20, 2013). District courts have broad discretion to determine whether a litigant has sufficiently demonstrated poverty. *Id.* If IFP status is granted, it "does not exempt litigants from the costs of copying and filing documents; service of documents other than the complaint; costs; expert witness fees; or sanctions." *Porter v. Dep't of Treasury*, 564 F.3d 176, 180 n.3 (3d Cir. 2009) (internal citations omitted).

In order to apply to proceed IFP, a plaintiff must complete the form entitled, "Application to Proceed Without Prepaying Fees or Costs," which is available on this Court's website. For plaintiff's convenience, a copy of the form is appended to this Order.

Dated: New York, New York
January 19, 2024

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff or petitioner applying (each person
must submit a separate application))

-against-

CV

() ()

(Provide docket number, if available; if filing this with
your complaint, you will not yet have a docket number.)

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? Yes No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? Yes No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? Yes No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment Yes No

(b) Rent payments, interest, or dividends Yes No

(c) Pension, annuity, or life insurance payments	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(d) Disability or worker's compensation payments	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(e) Gifts or inheritances	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.)	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(g) Any other sources	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?
5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:
6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:
7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):
8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

Dated

Signature

Name (Last, First, MI)

Prison Identification # (if incarcerated)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)